No. 11,508

In the

United States Circuit Court of Appeals

For the Ninth Circuit

CHESTER FIPPIN and ST. CLAIRE CORPORATION, a corporation,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appellants' Reply Brief

Appeal from the District Court of the United States for the District of Nevada.

JAMES F. BOCCARDO,
Bank of America Building,
San Jose, California.
Attorney for Appellant.

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The answer brief of the appellee is more remarkable for what is does not say than for what it does. It does not say anything about the War Mobilization and Reconversion Act, 50 U. S. C. A. War App., Sec. 1658b, which declares:

> "The executive agencies exercising control over manpower, production or materials shall permit the expansion, resumption or initiation of production for non-war use whenever such production does not require materials, components, facilities or labor needed for war purposes, or will not otherwise adversely affect or interfere with the production for war purposes."

It must be presumed that appellee was at an utter loss to explain how an executive agency could issue a valid order in conflict with the mandate contained in this statute. Heretofore it has been conceded that the Constitution, (Art. 1, Sec. 1), vested the legislative powers of the Federal Government in the Congress.

None of the cases cited in appellee's brief even mention the statute quoted above. Only three of these cases touch on the matter of the validity of executive orders and a reading of these three discloses the reason why that statute was not mentioned in any of them.

In *Rose v. United States*, 149 Fed. (2) 755, the Court was considering an indictment for conspiracy to violate certain executive orders issued by Office of Production Management, War Production Board and Office of Price Administration, which prohibited deal-

ing in new rubber tires without a permit from the rationing board. The conspiracy was alleged to have originated on December 12, 1941, i.e., three years before the War Mobilization and Reconversion Act (quoted above) was passed by Congress.

Porter v. Shibe, 158 Fed. (2) 69, arose out of an attempt on the part of certain landlords to evict tenants during the period in the middle of 1946 when the Office of Price Administration was in a state of suspended animation. Certainly a law which relates to "manpower, production or materials" could not apply to a tenant eviction case.

United States v. Elade Realty Co., 157 Fed. (2) 979, involved a violation of a priority order issued by the National Housing Administration on February 10, 1943,—more than a year before the Congress passed the War Mobilization and Reconversion Act.

None of the foregoing cases have any significance whatever in respect to the points made in our opening brief.

Appellee cites authority in support of the proposition that Congress may ratify acts of Federal officers and agencies by making appropriations for their bene-

fit. This doctrine of implied ratification can have no application to an order issued in defiance of the express mandate of an act of Congress. There is no support either in reason or authority for any such proposition.

Appellee fails to even mention many other points contained in Appellant's Opening Brief and its answer to others does not seem to require a reply.

Respectfully submitted,

JAMES F. BOCCARDO,

Attorney for Appellants.